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T.R.A. DOCKET ROOM

April 8, 2005

Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

**Re: In Re: Petition for Interconnection by Cinergy Communications
Company Against BellSouth Telecommunications, Inc.
Docket No.: 01-00987**

Dear Chairman Miller:

Pursuant to the "Notice of Filing" issued March 28, 2005, Cinergy Communications Company submits the following comments concerning the March 25, 2005, Order of the Federal Communications Commission.

In the Order, the FCC rejected Cinergy's argument raised in its Motion for Summary Judgment that the FCC's commingling rules require BellSouth to provide wholesale DSL service over a UNE loop facility. Order, at paragraph 35. Cinergy disagrees with the FCC's decision but recognizes that, unless overturned by a court, the FCC's narrow interpretation of its commingling rules moots Cinergy's argument in the Motion.

The FCC order, however, "does not address broader questions regarding the tying or bundling of services in general that have been raised in the record in this proceeding." Paragraph 37. The FCC therefore opened a "Notice of Inquiry" to examine the competitive consequences "when providers bundle their legacy service with new service" such as BellSouth does when it bundles DSL service with analog voice service. The agency seeks comment on whether such bundling is harmful to competition "particularly unaffiliated providers of new services, such as Internet protocol (VOIP)." *Id.*

The TRA, of course, also has both the power and the obligation to prohibit "tying arrangements or other anti-competitive practices" by telecommunications carriers. T.C.A. §65-5-208(c). The Authority, therefore, clearly has jurisdiction to consider the substantive merits of Cinergy's argument that BellSouth's policy of refusing to sell DSL over a UNE loop should be prohibited as an anti-competitive, tying arrangement that deprives customers of choice and inhibits the development of new services such as VOIP.


¹ *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers* WC Docket No 03-251

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Cinergy and BellSouth have already filed testimony on this issue but that evidence is now approximately three years old and does not address the impact of BellSouth's policy on new services such as VOIP. Cinergy therefore requests that this matter be assigned to a pre-arbitration officer for the purpose of establishing a procedural schedule for filing supplemental testimony and conducting an evidentiary hearing on this last, remaining issue in the arbitration.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/djc
cc: Guy Hicks